

PROTECTING UNPAID SELLERS OF LIVESTOCK IN BUYER PAYMENT DEFAULTS

OVERVIEW

Producers and auction markets sell livestock to dealers. These dealers are in the business of buying and reselling livestock. When a livestock dealer fails to pay, sellers are left financially devastated.

Under the Packers and Stockyards (P&S) Act, markets are required to maintain a custodial (trust) account and pay sellers for livestock promptly, even if the buyer does not pay the livestock market. When a producer sells directly to a dealer, the producer bears the risk of payment default.

If a dealer takes delivery of a seller's livestock and fails to pay, not much can be done to recover livestock or funds under current law. Dealer bonds under the P&S Act are designed to protect against buyer payment default. However, dealer bond payments average less than 15 cents on-the-dollar.

The creation of a Dealer Statutory Trust would improve financial recovery for unpaid sellers in the event of a dealer default. A Dealer Statutory Trust would give unpaid sellers of livestock first priority to reclaim livestock or, if they have been resold, the proceeds/receivables from livestock.

A Dealer Statutory Trust would not require a separate account or changes to current business practices. Additionally, a Dealer Statutory Trust would not require a government or industry pool of funds.

Statutory trusts are proven tools to improve seller recovery. Industry has seen success from the Packer Statutory Trust for livestock and Perishable Agriculture Commodity Act Statutory Trust for produce.

Over the past 10 years, there have been dozens of dealer defaults, in some instances involving millions of dollars. To make a bad situation worse, if a defaulting dealer declares bankruptcy, there is a substantial risk of a preferential transfer claim. This is where the bankruptcy trustee demands the seller remit 90-days' worth of monies already received by the seller from the dealer for previous sales. A Dealer Statutory Trust would help prevent preferential transfer in bankruptcy claims.

In the end, a Dealer Statutory Trust would improve seller recovery in dealer defaults by giving unpaid sellers priority in livestock or livestock proceeds. *After all, shouldn't the unpaid producer who raised the animals or the market who already paid the producer be first in line to get their livestock or related proceeds back?*

STATUS

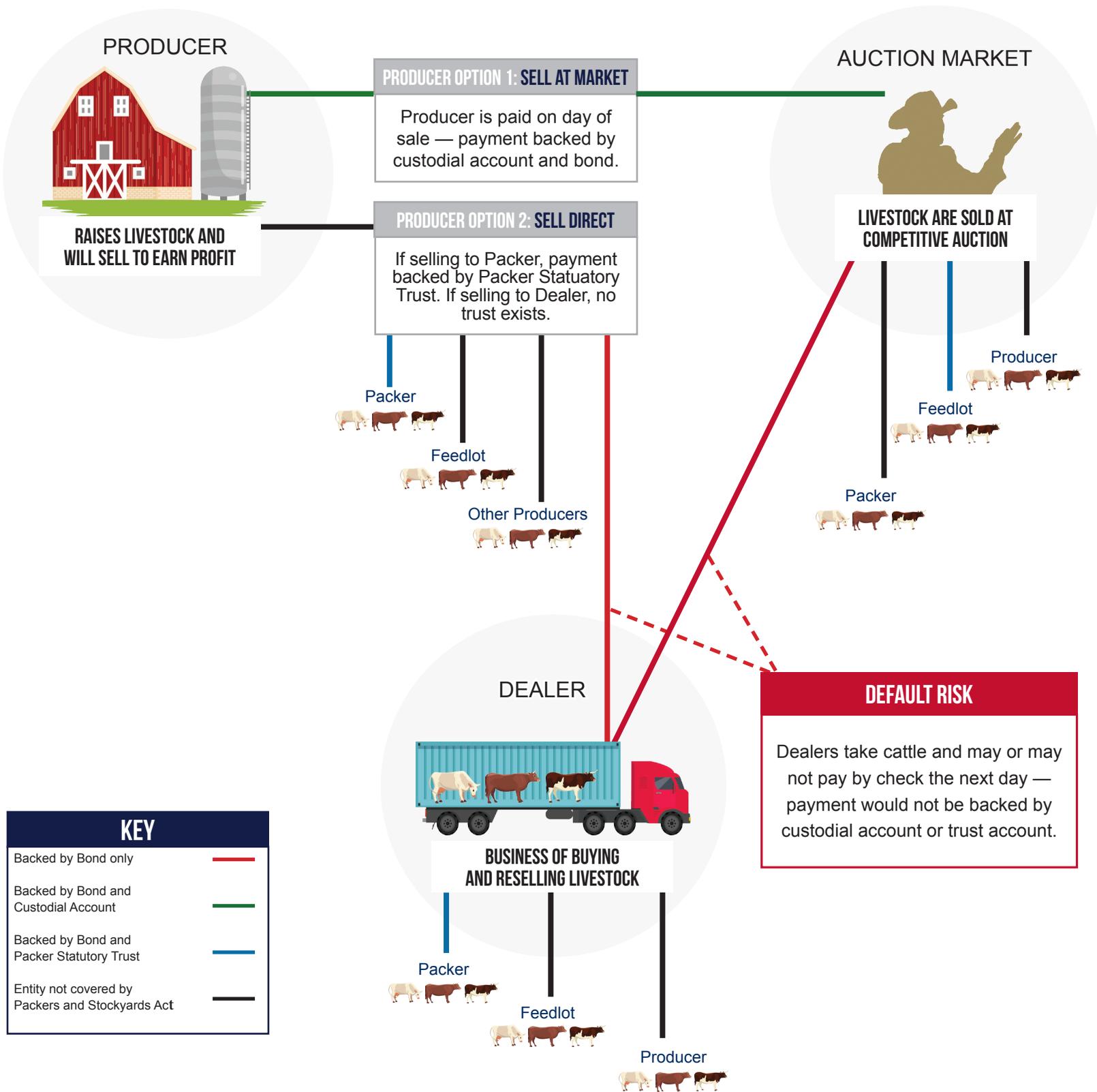
In the 115th Congress, the Securing All Livestock Equitably (SALE) Act, H.R. 4058, and Senate companion, S. 3140, were introduced to create a Dealer Statutory Trust. The Farm Bill included a provision for the U.S. Department of Agriculture to do a feasibility study on creating a Dealer Statutory Trust. This study is due back to Congress in December 2019.

QUESTIONS?

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WHAT HAPPENS IF A DEALER DOES NOT PAY?

- Original seller cannot reclaim livestock if resold
- Dealers' bank with general blanket security interest has priority over unpaid seller (producer or market)
- Bond payments recover only about 15 cents on-the-dollar on average and 5 cent on-the-dollar in some cases